

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Hardee Power Partners Limited

Docket Nos. ER06-327-000
OA06-2-000
TS06-6-000

Tampa Electric Company

Docket No. ER06-328-000

ORDER ACCEPTING FILING AND GRANTING REQUEST FOR WAIVER OF
ORDER NOS. 888 AND 889 AND PART 358 OF THE COMMISSION'S
REGULATIONS

(Issued February 13, 2006)

1. This order accepts for filing amendments to purchase and sales agreements filed by Hardee Power Partners, Limited (Hardee) and Tampa Electric Company (Tampa) connected to the expansion of the Payne Creek generating facility (Payne Creek). It also grants waiver of Order Nos. 888¹ and 889² and Part 358 of the Commission's regulations.³

¹ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.* Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.* New York v. FERC, 535 U.S. 1 (2002).

² Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, 62 Fed. Reg. 12,484 (March 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

³ 18 C.F.R. § 358 (2005).

Background

2. Hardee owns and operates a generation facility located in Hardee and Polk Counties, Florida (Hardee Facility). Hardee has committed to sell all the energy and capacity of the Hardee Facility to Seminole Electric Cooperative, Inc. (Seminole) and Tampa pursuant to an Agreement for Sale and Purchase of Capacity and Energy between Hardee and Seminole (Seminole PPA) and to an Agreement for Sale and Purchase of Capacity and Energy between Hardee and Tampa (collectively, PPAs).⁴ The Hardee Facility interconnects with the transmission systems of Seminole and Tampa through limited electric facilities owned by Hardee, including a 230-kV switchyard (Hardee Switchyard). Hardee uses the Hardee Switchyard and interconnection facilities to deliver the Hardee Facility's power to Hardee's power purchasers. Pursuant to the Seminole PPA, Seminole constructed Payne Creek, which is on the same site as the Hardee Facility and is interconnected to the transmission facilities owned by Seminole that connect with the Hardee Switchyard. Now, Seminole seeks to increase the capacity of Payne Creek by approximately 271 MW.

3. On December 15, 2005, Hardee filed proposed amendments to the Seminole PPA and Tampa PPA to adjust the capacity charge and rate formulas to reflect Seminole's increased usage of Hardee's common facilities due to the expansion of Payne Creek's capacity. In support of its filing, Hardee states that the proposed revisions do not increase Hardee's revenues, but only reallocate costs currently paid by Seminole and Tampa to reflect Seminole's increased benefit of the common facilities (and Tampa's proportionately reduced usage). Hardee requests a Commission determination that it continues to meet the Commission's standards for waiver of Order Nos. 888 and 889 and Part 358 of the Commission's regulations.

4. In addition, Tampa filed a proposed amendment to the Trilateral Interconnection Agreement among Tampa, Hardee, and Seminole (Trilateral IA).⁵ Tampa explains that the proposed revisions simply document the modifications to the Hardee Switchyard that Seminole will undertake to accommodate its planned expansion of Payne Creek.

5. Hardee proposes an effective date of February 14, 2006 for the PPA amendments but states that the amendments will not become effective until: (1) the Commission

⁴ Both PPAs were originally dated July 27, 1989, and the instant amendments are dated August 29, 2005. The PPAs were accepted for filing by the Commission and designated as Hardee's Rate Schedules FERC Nos. 1 and 2. *See TECO Power Services Corp.*, 53 FERC ¶ 61,202 (1990) (*TECO*). The instant filing represents the seventh amendments to the PPAs.

⁵ The Trilateral IA is designated as Tampa's Rate Schedule FERC No. 83.

accepts the PPA amendments for filing; (2) “the Commission issues an order redetermining that [Hardee] is an [exempt wholesale generator (EWG)];”⁶ (3) the Commission grants Hardee approval for the acquisition from, and disposition, to Seminole of the equipment associated with the Hardee Switchyard upgrade;⁷ (4) the Commission accepts the proposed Trilateral IA amendment; and (5) if the Commission imposes any additional obligations on Hardee because of the upgrade, and Hardee has consequently entered into any necessary agreements and/or made appropriate filings, the Commission has issued an order accepting such filings. Hardee also requests waiver of the notice requirements of section 35.3 of the Commission’s regulations to the extent necessary to implement any billing adjustment to the capacity charge covering the period between the effective date of the PPA amendments and the 2006 construction mobilization and release date.⁸

6. Tampa proposes an effective date of February 14, 2006 for the Trilateral IA amendment.

Notice and Pleadings

7. Notice of the filing of the PPA amendments and the Trilateral IA amendment was published in the *Federal Register*, 71 Fed. Reg. 110 (2006), with protests and interventions due on January 5, 2006. None was filed. Notice of the request for waiver of the Standards of Conduct for Transmission Providers was published in the *Federal Register*, 71 Fed. Reg. 6,069 (2006), with protests and interventions due on February 7, 2006. None was filed.

⁶ On September 25, 2003, the Commission granted Hardee’s request for EWG status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992. *Hardee Power Partners Ltd.*, 104 FERC ¶ 61,327 (2003). On December 15, 2005, in Docket No. EG06-22-000, Hardee filed a request for redetermination as an EWG. On February 7, 2006, the Commission granted this request. *Hardee Power Partners Ltd.*, 114 FERC ¶ 62,123 (2006).

⁷ On December 15, 2005, in Docket No. EC06-41-000, Hardee filed a request for authorization for the disposition and acquisition of these jurisdictional interconnection transmission facilities. On February 7, 2006, the Commission granted this request. *Hardee Power Partners Ltd.*, 114 FERC ¶ 62,122 (2006).

⁸ The construction mobilization and release date is the date when Seminole’s contractor has equipment, material, and labor on the site, ready and organized to commence construction.

Discussion**A. PPA Amendments**

8. The capital costs for the Hardee Facility are allocated on a 60 percent/40 percent basis to Seminole and Tampa, respectively.⁹ This allocation factor was considered and accepted by the Commission in 1990.¹⁰ The 60/40 percent allocation of responsibility for payment of the fixed costs for the Hardee Facility is not changed in the instant filing. Seminole's construction of approximately 271 MW will necessitate the reallocation of the cost of Hardee Facility common facilities and the fixed and variable operation and maintenance costs of those facilities.¹¹

9. In order to meet the increasing demand for generation from its member systems, Seminole desires to install new combustion turbines at Payne Creek with a capacity of approximately 271 MW. Seminole's construction of additional generation will cause it to benefit from a larger percentage of the Hardee Facility common facilities than Tampa. As a result, the proposed PPA amendments modify the shared costs to reflect Seminole's increased and Tampa's reduced benefit due to Seminole's installment of additional capacity. The rate adjustment required by Seminole's expansion will shift costs to Seminole and result in a larger monthly charge, increasing Seminole's monthly capacity charge (from \$8,106/month to \$15,898/month). Conversely, the rate adjustment will shift costs away from Tampa and result in a monthly credit, reducing Tampa's monthly capacity charge (the credit increases from \$6,594/month to \$14,386/month). Since the increase in Seminole's total capacity payments (\$7,792/month) is equal to Tampa's

⁹ The 60/40 percent ratio generally reflects the allocation of Hardee capacity costs to provide Seminole's and Tampa's power entitlements. Seminole has first priority to the Hardee Facility capacity and corresponding energy when needed to provide back-up power. Tampa primarily needs the unit during its peak periods. However, Tampa is entitled to use the capacity at any time to meet its native load or firm power commitments unless it being utilized by Seminole to meet its back-up power requirements.

¹⁰ *TECO*, 53 FERC ¶ 61,202 at 61,182.

¹¹ The Hardee Facility common facilities include access roads, the cooling reservoir, the Hardee Switchyard, the site, and water wells and pumps.

decrease (\$7,792/month), the rate adjustments are revenue neutral to Hardee.¹² Given that the rate adjustments simply track the increase in total capacity on site that will share the Hardee Facility common facilities after the expansion and the adjustments are revenue neutral, we will accept the PPA amendments for filing effective February 14, 2006,¹³ as requested.

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Current Charges	Monthly Revenue Requirement	Amount Embedded in Capacity Charge	Amount Recovered in Capacity Charge Adjustment
Seminole	\$66,683	\$58,577	\$8,106(charge)
Tampa	\$32,459	\$39,052	\$6,594(credit)
Total	\$99,141	\$97,629	\$1,512

Proposed Charges	Monthly Revenue Requirement	Amount Embedded in Capacity Charge	Amount Recovered in Capacity Charge Adjustment
Seminole	\$74,475	\$58,577	\$15,898(charge)
Tampa	\$24,666	\$39,052	\$14,386(credit)
Total	\$99,141	\$97,629	\$1,512

¹³ The contingencies that Hardee states may interfere with the effective date of the PPA amendments have been resolved. *See Hardee Power Partners Ltd.*, 114 FERC ¶ 62,122; *Hardee Power Partners Ltd.*, 114 FERC ¶ 62,123. Also, since 60 days prior notice has been provided, we find that it is not necessary to grant Hardee's requested waiver of the notice requirements of section 35.3 of the Commission's regulations.

B. Trilateral IA Amendment

10. The Trilateral IA provides for interconnection of the Hardee Facility to transmission lines owned by Tampa and Seminole at the Hardee Switchyard. There are five 230 kV transmission lines leaving the Hardee Switchyard, four owned by Seminole and one by Tampa. Thus, the Hardee Switchyard serves as a point of interconnection between the Tampa and Seminole transmission facilities. Under the Trilateral IA, Seminole and Tampa do not obtain and are not required to obtain transmission service from Hardee with respect to power flows between Seminole's and Tampa's respective transmission facilities. Rather, the Hardee Switchyard is considered a single electrical node for purposes of power exchange. Tampa proposes to modify the Trilateral IA to reflect the changes to the Hardee Switchyard that Seminole will undertake to support the expansion of Payne Creek. For example, Seminole will supply and install upgrade equipment and transfer the upgrade equipment to Hardee and Hardee will transfer old equipment to Seminole.¹⁴ Given that the purpose for amending the Trilateral IA is to incorporate provisions that recognize Seminole's construction of additional generation facilities as well as the equipment necessary to provide for the interconnection and it does not assess charges, we will accept the Trilateral IA amendment for filing effective February 14, 2006, as requested.

C. Waiver of Order Nos. 888 and 889

11. In a series of prior orders, the Commission has enunciated the standards for waiver of or exemption from some or all of the requirements of Order Nos. 888 and 889.¹⁵ The Commission grants requests for waiver of Order No. 888 by public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utilities receive requests for transmission service. Should such a public utility receive a request for transmission service, the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request and must comply with any additional requirements that are effective on the date of the request.¹⁶

12. The Commission also has determined that waiver of Order No. 889 would be appropriate for a public utility: (1) if the applicant owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid);

¹⁴ On February 7, 2006, the Commission authorized the disposition and acquisition of these facilities. *Hardee Power Partners Ltd.*, 114 FERC ¶ 62,122.

¹⁵ See *Sun River Elec. Coop.*, 91 FERC ¶ 61,156 at 61,593 n.6 (2000).

¹⁶ See *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 at 61,941 (1996) (*Black Creek*).

or (2) if the applicant is a small public utility¹⁷ that owns, operates, or controls an integrated transmission grid, unless it is a member of a tight power pool, or other circumstances are present that indicate that a waiver would not be justified.¹⁸ Moreover, the Commission has held that a waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for open access same-time information system (OASIS) waivers) or an entity complains that the public utility has used its access to information about transmission to unfairly benefit the utility or its affiliate (for Standards of Conduct waivers).¹⁹

13. In support of its request for continued²⁰ waiver of the requirements of Order Nos. 888 and 889 (OASIS), and their implementing regulations at section 35.28 and Part 37 of the Commission's regulations, Hardee states that the Hardee Switchyard constitutes limited, discrete facilities built by Hardee for the purpose of delivering the output of the Hardee Facility to the transmission systems of Seminole and Tampa. Hardee also notes that, pursuant to the Trilateral IA, Tampa and Seminole are directly interconnected at the Hardee Switchyard and do not require or obtain transmission service from Hardee in order for Tampa or Seminole to exchange power or provide transmission service under their respective open access transmission tariffs. Hardee explains that, while Seminole delivers power from Payne Creek to its system through the

¹⁷ To qualify as a small public utility, the applicant must meet the Small Business Administration definition of a small electric utility (*i.e.*, disposes of no more than four million MWh annually).

¹⁸ See *Black Creek*, 77 FERC ¶ 61,232 at 61,941; see also *Midwest Energy, Inc.*, 77 FERC ¶ 61,208 at 61,854 (1996) (describing tight power pool exception).

¹⁹ See *Central Minnesota Mun. Power Agency*, 79 FERC ¶ 61,260 at 62,127 (1997); *Easton Utilities Comm'n*, 83 FERC ¶ 61,334 at 62,343 (1998).

²⁰ Notwithstanding that Hardee claims to have been granted waiver of Order No. 889, the case to which Hardee cites does not grant such waiver, and we can find no record of such waiver having been granted. However, Hardee has been granted waiver of Order No. 888, see *Allegheny Power Sys. Inc.*, 80 FERC ¶ 61,143 at 61,553-4 (1997), and we have held that, if a utility has satisfied the requirements for waiver of Order No. 888, it would also qualify for waiver of Order No. 889. See *Basin Creek Equity Partners, LLC*, 112 FERC ¶ 61,197 at P 21 n.19 (2005) (“[The] standards for waiver of Order No. 888 also apply to a requested waiver of Order No. 889, which sets forth a corollary requirement relating to the transmission provider’s obligation to establish an [OASIS].”); *Northern State Power Co.*, 76 FERC ¶ 61,250 at 62,296 (1996). Thus, we note that Hardee would have been granted waiver of Order No. 889 had it so requested.

Hardee Switchyard (and will continue to do so after the expansion), Seminole delivers or will deliver such power using its own transmission lines. Hardee adds that Seminole will deliver the power pursuant to the terms of the Trilateral IA, which acknowledges that Seminole does not need to obtain any transmission service from Hardee or Tampa for such deliveries.²¹ Based on the statements in Hardee's request, consistent with *Black Creek*, we will grant Hardee a waiver of the requirements of Order Nos. 888 and 889 (OASIS).

D. Waiver of Standards of Conduct for Transmission Providers

14. On November 25, 2003, the Commission issued a Final Rule adopting Standards of Conduct for Transmission Providers (Order No. 2004).²² Under Order No. 2004, the Standards of Conduct govern the relationships between Transmission Providers and all of their Marketing and Energy Affiliates. Order No. 2004 states that Transmission Providers may request waivers or exemptions from all or some of the requirements of Part 358 for good cause.²³

15. Waivers of Order No. 2004 are granted, upon request, to: (1) a utility that owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) a small public utility that owns, operates, or controls an integrated transmission grid unless it is a part of a tight power pool, or unwarranted by other circumstances.²⁴

²¹ Hardee contends that, even if Hardee were deemed to be delivering power from Seminole through its Hardee Switchyard, waiver is appropriate when limited, discrete interconnection facilities may be used by a generator that is not owned by the same entity that owns the limited, discrete interconnection facilities. *Citing Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228 at P 24 (2005).

²² Standards of Conduct for Transmission Providers, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032, *order on reh'g*, Order No. 2004-B, 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs., Regulations Preambles ¶ 31,172; *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *appeal pending sub nom. National Gas Fuel Supply Corp. v. FERC*, No. 04-1183, *et al.* (D.C. Cir. June 15, 2004).

²³ See 18 C.F.R. § 358.1(d) (2005); *Bear Creek Storage Co.*, 108 FERC ¶ 61,011 (2004); *Black Marlin Pipeline Co.*, 108 FERC ¶ 61,184 (2004); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243 (2004).

²⁴ *Black Creek*, 77 FERC ¶ 61,232.

16. As set forth in detail above, Hardee owns only a limited and discrete transmission facility; consequently, we find good cause to grant Hardee's request for an exemption from the requirements of Part 358 of the Commission's regulations.

The Commission orders:

(A) The PPA amendments are hereby accepted for filing, to become effective on February 14, 2006, as discussed in the body of this order.

(B) The Trilateral IA amendment is hereby accepted for filing, to become effective on February 14, 2006, as discussed in the body of this order.

(C) Hardee's request for waiver of the requirements of Order Nos. 888 and 889 and Part 358 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(D) Hardee's request for waiver of the notice requirements of section 35.3 of the Commission's regulations is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.